

Matter

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-223300

**DATE:** June 24, 1986

**MATTER OF:** Industrial Maintenance Services, Inc.

**DIGEST:**

A below-cost bid is not nonresponsive. A protest contending that no bidder can properly perform the contract at a price lower than that bid by the protester raises an issue of bidder responsibility, the affirmative determination of which will not be reviewed absent a showing of possible fraud or bad faith on the part of the procuring officials or that the agency failed to apply or misapplied definitive responsibility criteria stated in the solicitation.

Industrial Maintenance Services, Inc. (Industrial) protests award to any one of the eight firms with bid prices lower than those it submitted under invitation for bids (IFB) No. N62467-86-B-4905, issued by the Department of the Navy for cleaning and custodial services. Industrial, the incumbent contractor, contends that each of the lower bids is nonresponsive because its price of \$465,624 is the absolute minimum cost of providing the required services.

We dismiss the protest.

The adequacy of a bid price does not give rise to a responsiveness issue. Responsiveness in government procurement refers to whether a bid as submitted reflects an unequivocal offer to provide the required supplies or services so that acceptance of the bid would bind the contractor to meet the government's needs in all material respects. Power Test, Inc., B-218123, April 29, 1985, 85-1 CPD ¶ 484. As Industrial has not alleged that any of the lower bidders took exceptions to the terms and conditions of the IFB, it has provided no basis on which we can conclude that those bids were nonresponsive. Moreover, below-cost bids do not themselves provide a basis for rejection. Ares, Inc., B-209323, Mar. 31, 1983, 83-1 CPD ¶ 336. The regulations require only that the contracting officer take appropriate action to ensure that the losses incurred in a below-cost award are not recovered. Federal Acquisition Regulation (FAR), 48 C.F.R. § 3.501-2(a) (1984).

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In our view, Industrial's protest is essentially a challenge to the ability of the lower bidders to provide the required services at the prices they bid. Thus, it raises an issue of responsibility rather than of responsiveness. Montgomery Elevator Co., B-220655, Jan. 28, 1986, 86-1 CPD ¶ 98. Before awarding a contract, the contracting officer must make a determination that the firm selected for award is responsible, that is, that it can perform the contract. FAR, 48 C.F.R. § 9.103(b). Such a determination will not be reviewed by our Office in the absence of a showing of possible fraud or bad faith on the part of the procuring officials or that the solicitation contained definitive responsibility criteria that allegedly were not applied. Clausing Machine Tools, B-216113, May 13, 1985, 85-1 CPD ¶ 533. Industrial has not indicated that either exception is applicable here.

The protest is dismissed.

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General Counsel